

Bill of Rights Forum

14th meeting, Wellington Park Hotel

14th March 2008

Present

Chris Sidoti, Chair

Martina Anderson MLA,
Sinn Féin

Paula Bradshaw*, UUP

Annie Campbell, Women's
Sector

Elaine Campbell*, Older
People's Sector

Lisa Coyle, SDLP

Brian Crowe, UUP

Jeff Dudgeon*, UUP

Neil Faris*, Business Sector

Stephen Farry* MLA,
Alliance

Aideen Gilmore, Human
Rights NGO Sector

Eilis Haughey, SDLP

Rev. Dr. Samuel
Hutchinson, Churches

Anna Lo, Alliance

Seamus Lynch*, Older
People's Sector

Mairead McCafferty, Sexual
Orientation Sector

Nelson McCausland, MLA,
DUP

Sorcha McKenna, Children
and Young People's Sector

Patricia McKeown, Trade
Unions

Helena Macormac*, Ethnic
Minority Sector

Alban Maginness MLA,
SDLP

Thomas Mahaffy, Trade
Unions

Shannonbrooke Murphy,
Sinn Féin

Dermot Nesbitt, UUP

Vincent Parker, Sinn Féin

Ian Parsley*, Alliance

Christopher Stalford, DUP

Margaret Ward*, Women's
Sector

Monica Wilson, Disability
Sector

Derek Hanway*, Ethnic
Minority Sector

Ben Lee, Human Rights
Advisor

Gillian Preece, Secretary

Gareth Wright, Secretariat

* for part of the meeting

Alternates

Elaine Campbell*, Older People's Sector
Colin Harper, Disability Sector
Seamus Lynch*, Older People's Sector
Helena Macormac*, Ethnic Minority Sector

Legal Advisors

Aileen McColgan (Women's Rights)
Aoife Nolan (Economic and Social Rights)

Official Observers

Kevin Hanratty, Northern Ireland Human Rights Consortium
Ann Hope, and Miriam Titterton NIHRC
Laura Dick, NIO

Apologies

Father Tim Bartlett, Neil Faris (for the afternoon session),
Simon Hamilton MLA, Dolores Kelly, Paddy Kelly, James
Knox, Peter Weir

Working group final reports

Economic and Social Rights (including equality) working group

1. The draft report had been circulated. The Convenor of the working group introduced the report, noting the positive nature of the working group's deliberations and that this kind of conversation needed to continue. The working group had tried to enable as much discussion as possible,

particularly to allow those opposed to economic and social rights to voice their views.

2. The recommendations in the interim report had been pared down in light of comments made. There were a number of issues the working group did not have time to consider, that are listed in the report (p62 forward).

Discussion (general points)

- A number of Forum members indicated general support (Sinn Féin, SDLP, older people's sector, children and young people's sector, human rights sector, women's sector, sexual orientation sector).
- The UUP's position is that, where appropriate, economic and social (E&S) rights should be provided for in legislation. The report as drafted limits the options open to the Assembly and Westminster. The party's view on the inappropriateness of entrenching E&S rights reflects broad political opinion across the UK. An alternative acceptable to the UUP would be a non-justiciable Charter of E&S rights (as in Canada).
- Alliance are happy to proceed on the basis of examining rights, then seeing whether they fit the

'particular circumstances' and are also happy to consider progressive realisation. Use of terms like 'compulsory' imply stipulating how resources should be allocated.

- The DUP is unable to agree with the ideological leanings of the report and questions the issues of justiciability and imposing funding obligations.
- The prioritisation of security in the allocation of public resources over the last thirty years has had a direct impact on the socio-economic circumstances of Northern Ireland, particularly of the most vulnerable. Legislation now aims to counter this long term neglect but the vulnerable are still discriminated against in social care, health care, housing etc. Older people are some of the most vulnerable and some of the most abused. They are also the sector that votes most consistently and are developing a rights-based movement. One of the only guarantees for older people's rights, in a society that consistently votes on community lines, is a Bill of Rights.
- Economic and social rights are fundamental to children and young people, and to women. This

should not be an issue that sees political parties and civil society opposing each other: both should work together to assist people who are still suffering as much as they ever did. The measure of a society is in how it protects the vulnerable.

- Economic and social rights are intrinsically linked to civil and political rights, providing the means to exercise the latter. This is acknowledged at international level.
- Economic and social rights were not what was intended by the Belfast/Good Friday Agreement which focused on parity of esteem and mutual respect for both communities.
- The Belfast/Good Friday Agreement left it open for the Bill of Rights to draw on international standards, such as the International Covenant on Economic, Social and Cultural Rights, that the UK has ratified.
- The tension between economic and social rights and democratic independence can be resolved.
- Experience internationally is that Bills of Rights have not opened the floodgates to

litigation. A Bill of Rights is necessary to entrench values.

- Progressive realisation does not restrict or restrain governments – rather, while it enshrines rights, it lets governments seek to achieve their delivery over time.
- The Northern Ireland Assembly does not have the fiscal levers needed to make progressive realisation realistic. It is not a constitutional body and it does not have tax raising powers.
- Reference was made to page 12 of the report, which implies that all the rights are to be justiciable.

Discussion (specific proposals)

Page 16 (right to the highest attainable standard of physical and mental health)

- The risks associated with being too specific and/or including lists were highlighted. The Bill of Rights needs to be able to apply to future contexts. Lists always risk omission.
- The SDLP clarified its position at page 23. They do not endorse abortion.

- The DUP believes the draft attempts to insert into the Bill of Rights a provision that all parties are opposed to. The draft ignores the rights of the unborn child.
- Sinn Féin does not support abortion on demand, but does believe the right to reproductive healthcare is essential.
- The UUP reserves its position.
- Healthcare is one of the biggest issues for women. The draft matches international standards. It is not possible to discuss healthcare without reference to reproductive health, which includes abortion, but also maternity and pre/post menopausal care, some cancers, family planning etc. The WHO definition at footnote 15 was highlighted.
- An interpretive clause was suggested.
- The right to information about healthcare is important for adolescents.
- The reference to emergency medical treatment was included to cover non-nationals, and decisions being made on the basis of the patient's age.

- The DUP believes the provision is desirable but that a Bill of Rights will not make it happen, as it restricts Government.
- Sinn Féin and the SDLP both support the proposal.
- Affordability covers rent as well as house prices.
- The Housing Executive needs to retain the ability to evict swiftly tenants involved in criminal activity.
- Accessibility refers to physical accessibility, but also to the needs of the elderly, parents of young children etc.
- Affordable housing in Scotland is provided for in legislation, not a Bill of Rights.
- Despite existing legislation a disproportionate number of older people live in poor housing.
- Provision of appropriate emergency accommodation goes to the heart of addressing issues of domestic violence, child abuse, the placing of unaccompanied minors in unvetted bed

and breakfast accommodation, and Travellers' sites with lack of water, sanitary provision etc. It also applies to young LGBT people who are thrown out of their homes.

- Attention was drawn again to the provision for progressive realisation: there is no expectation that everything has to be provided for the day after the Bill of Rights is enacted.
- It was further highlighted that these are not absolute rights but are a means of getting the needs of the most vulnerable onto the policy agenda. Examples of previous mistakes were cited, such as building large housing estates with no shop, bus service or medical provision.

Page 29 (right to an effective education)

- The high number of children in Northern Ireland leaving school with no qualifications and poor literacy and numeracy skills was highlighted.
- The possible impact on selection was raised.
- The need for all education sectors to be treated equally was also raised.

- Alliance prioritises integrated education (which is contradicted by draft clause 6) and the teaching of English as a second language.
- The provision needs to be harmonised with the proposals from the Culture, Identity and Language, and Children and Young People's working groups. The latter prioritises the best interests of the child, protection from bullying and participation by children and young people in decisions that affect them.
- Resources should be directed to meeting the needs of the individual.

3. The discussion of this report was adjourned until the meeting on 18th March.

Women's working group

4. The draft report had been circulated. The report focused on structural barriers facing women, including minority women and older women. There had been discussion of mainstreaming rights or having a separate chapter.

Discussion (general points)

- The SDLP endorses the report, apart from the comments on abortion, and supports a separate section on women's rights.
- The UUP recognises the undeniable disadvantage to women but think this is better addressed through legislation. Funding is a matter for the Assembly. A standalone equality clause could be agreed but not a separate section on women.
- Sinn Féin supports most of the report. Women's rights are connected to the particular circumstances because of the lower priority attached to domestic violence by the police, the disproportionate economic disadvantage resulting from male imprisonment, higher instances of domestic violence, lower provision of childcare and lower participation in public life by women.
- The DUP broadly agrees with an equality clause but the rest should be addressed on a UK-wide basis.
- Alliance generally supports the report.
- The overlap with the Criminal Justice and Victims working group report was noted.

- A separate section was justified in view of the issues around women living in armed communities, and the impact of violence against women.

Discussion (specific proposals)

Page 10, proposal 1 (physical integrity and autonomy)

- The emergence of 'new' issues as Northern Ireland changes was noted (eg trafficking, female genital mutilation).
- There was no agreement within the working group on abortion, but agreement that forced pregnancy is part of violence against women.
- It was noted that the British Government had been told to address the inconsistent provision of abortion in Northern Ireland compared with the rest of the UK.
- It was clarified that the proposal does not promote abortion on demand; neither does it preclude it.
- The proposal does not imply an obligation to make abortion available but addresses the issues of criminalising women who have had an abortion,

preventing women leaving Northern Ireland to have an abortion and inadequate provision of after care.

- The concerns expressed by the Committee on CEDAW about high levels of teenage pregnancy, sexually transmitted diseases and sexual violence in Northern Ireland were all agreed in the working group. All are addressed by this proposal.
- Clause c (the right to make decisions) not only addresses abortion, but the right of people with disability to have children, the right to choose when to have children etc.
- An interpretative clause could clarify the above points.
- There needs to be a reference to the rights of the unborn child.
- The references to immigration will be difficult to implement as this is an excepted matter. However, delivery of immigration policy in Northern Ireland can be addressed by a Bill of Rights.

- This follows the example of the Canadian Charter – a general catch-all equality provision before a specific gender equality provision.
- It was noted that disability law does not make any provision for indirect discrimination.
- The impact on employment rights of faith groups was raised.
- The need to harmonise the various equality provisions was agreed.

Page 27, proposal 3 (gender equality)

- The comments of the Northern Ireland Human Rights Commission in 2004 (that a special mention of gender equality was justified) were noted.
- There should be pressure for the existing equality provisions to be used more effectively. A Bill of Rights is not the right place to provide for equality.

Page 30, proposal 4 (human dignity)

- The overlap with the Civil and Political Rights working group report was noted.

Page 31, proposal 5 (health)

- The overlap with the Economic and Social Rights working group report was noted.
- The question was raised whether there were child protection implications arising from confidentiality provisions for adolescent girls.
- The DUP and Sinn Féin both want the words 'the fullest range of' removed from the first line.
- The references to women with disabilities and women with language difficulties should be separated more clearly.

Page 34, proposal 6 (housing)

- The overlap with the reports of the Economic and Social Rights, and Criminal Justice and Victims working groups was noted.
- A reference to children and families should be added.
- Sinn Féin, the DUP, the SDLP and Alliance support the proposal. The UUP support the principle but not in a Bill of Rights.

Page 35, proposal 7 (equality in public life)

- The clause aims to get to the heart of all policy making decisions, and to reverse a lengthy

period of discrimination. It could be a standalone clause, or could be incorporated in the Civil and Political Rights section.

- It was noted that political parties are voluntary organisations and it is up to them to make their own selection rules, then up to the electorate whether to vote for them or not.
- It should be recognised that, as currently conducted, politics is not a particularly welcoming arena for women.
- Women are not less meritorious than men, but face more obstacles to participation. There is already significant precedent for special measures to address imbalance in public life.
- The proposal addresses not only participation in political life, but in public life.
- This is a fundamental issue to women. The relatively brief period that women have been able to vote, coupled with caring responsibilities, means a lot of ground has to be made up. If parties are genuinely committed to the merit principle, it makes sense to have as broad a pool as possible to choose from.

- Governments should be reflective of the communities they represent. Governments dominated by men cannot fully address women's issues.
- Wales and Scotland both introduced special measures, voluntarily, from the start of devolution, and are both now almost balanced. Cabinet ministers from both jurisdictions have stated that having a critical mass of women changes what we see as politically important. Research confirms this.
- State funding of parties in many areas of Europe is now attached to a duty on equality.

Page 38, proposal 8 (economic participation)

- The proposal addresses the removal of barriers such as limited career guidance, adolescent pregnancy, difficulties attached to returning to work, childcare, transport, gender stereotypes etc.
- The use of 'effective' was queried – how do judges define effectiveness?
- This is already a priority and so does not need to be included in a Bill of Rights.

- A Bill of Rights entrenches long term values. Hence issues of current priority are fit to be included.
- An enforceable right to affordable childcare could benefit both women and men.
- Getting women into paid employment benefits the whole economy.
- The proposal has links to proposals in the Economic and Social Rights working group report.
- It is important that education is relevant to the needs of the workforce. Guidelines on what is 'effective' are already in place in the national curriculum, frameworks, inspectorates etc.
- The problem is not with defining effectiveness but measuring it.

Page 40, proposal 9 (employment)

- The overlap with the Economic and Social Rights working group report was noted.
- It was noted that social security is an excepted matter.

Page 43, proposal 10 (criminal justice)

- The overlap with the Criminal Justice and Victims working group report was noted.
- The findings of the Northern Ireland Human Rights Commission report on women in prison were noted.

Any other business

5. The Secretariat informed the Forum that proposals were in hand for a press conference at 2pm on 31st March, to be held at the Hilton Hotel, Belfast, for the handover of the Forum's report to the Northern Ireland Human Rights Commission. All Forum members, working group members, outreach workers, legal advisors and official observers were encouraged to attend.